

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of **Lori C. Blankenship**) **FINAL ORDER**
) Case No. INS 10-01-007

History of the Proceeding

The Director of the Oregon Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take enforcement action against Lori C. Blankenship (Blankenship).

On 2/24/10, the director issued a notice of proposed action informing the party that the director proposed to take enforcement action against the party, the party was entitled to a hearing pursuant to ORS 183.415, and if the party wanted a hearing then the party had to send to the director a written request for a hearing so that the director received it by 3/17/10.

On 3/3/10, the director timely received from the party a written request for a hearing.

On 3/11/10, the director referred the party's request for a hearing to the Office of Administrative Hearings (OAH).

On 5/5/10, OAH scheduled a hearing to be conducted on 7/13/10, and mailed to the party a written notice informing the party of the date, time and place of the hearing.

OAH conducted a hearing on 7/13/10 which was continued on 8/6/10. The hearing was conducted by Alison Greene Webster, an administrative law judge of OAH. The director, by and through the Insurance Division, appeared and was represented at the hearing by Kelly M. Gabliks, an Assistant Attorney General. The Insurance Division called Lori Blankenship, John Hardiman, Selma Matzye, Retha Whitaker and Clifford Cummins as its witnesses. The Insurance Division offered Exhibits A1 to A54 as its documentary evidence all of which were admitted into the record. The party appeared and represented herself at the hearing. The

party called herself as a witness, and Stephen Harrison and Michelle Slagle as character witnesses, at the hearing. The party offered Exhibits R1 to R5 as the party's documentary evidence all of which were admitted into the record.

On 8/25/10, OAH issued a proposed order. The proposed order found that the party committed all of the violations alleged, and recommended that the director take the action proposed, in the notice of proposed action. The proposed order informed the party that the party could file with the director written exceptions to the proposed order within 30 days after the proposed order was sent to the party.

On 9/24/10, the director received from the party an e-mail saying she "want[ed] to contest the [proposed] order and seek additional council [sic]" because the party felt "that the process in which this hearing was unfair and unjust."

The party argued that "An annuity is available up to age 85 years old and if the product in Oregon is able to sale to this age group then the age factor shouldn't be an issue of life expectancy. I feel the state hasn't regulated this properly."

The director's response is that even if a policy can be sold to a person up to 85 years old, the policy may not be sold to any person when the policy would be unsuitable for the person under all of the relevant circumstances of the person. OAR 836-080-0090 requires an insurance producer to inquire into and consider not only age but other circumstances of the person.¹

The party also argued that "the material used against (the Life expectancy [sic] report) presented in the hearing had an issue date of 2008 and these annuities weere [sic] written in 2005."

The director's response is that the Social Security Administration's Period Life table, which was admitted into evidence at the hearing, was for the year 2005, not 2008. See Exhibit 38.

¹ A person may not recommend to a consumer the purchase, sale or replacement of a life insurance policy or annuity, or any rider, endorsement or amendment to the policy or annuity, without reasonable grounds to believe that the recommendation or transaction is not unsuitable for the consumer based upon reasonable inquiry concerning the consumer's insurance objectives, financial situation and needs, age and other relevant information known by the person.

The party also argued that “the process of me not having a jury of my peers and only the administrative judge whom is employed by you is unjust.... I feel that this process is never in the side of an agent.... ... I feel that I deserve a proper hearing with the proper individuals to hear my case and not only those employed by the Insurance division.”

The director’s response is that the law does not give the party the right to a jury of peers but rather to a contested case hearing conducted by an administrative law judge of OAH, the administrative law judge that conducted the hearing is not employed by the director but rather by OAH, and the director followed the process required by law.²

The party further argued “[n]one of these clients complained about my sales with them until the state looked into it and as Ms. Matze [sic] said ‘the state showed up on my porch and put me under spot lights and interrogated me[.]’ I feel that it was a basic witch hunt.

The director’s response is that although a person may file with the director a complaint about another person and the director may investigate such complaint, see ORS 731.296, the director is not required to wait for a person to file a complaint before conducting an investigation to determine if the other person has violated, is violating, or is about to violate, the Oregon Insurance Code and related administrative rules, or is complying with such laws. See ORS 731.236(3). Additionally, all four of the persons who purchased annuities from the party filed with the director complaints about the party, and the complaints were admitted as documentary evidence at the hearing. The party had the opportunity to object to the admission of the complaints and to call or examine the complainants at the hearing.

The party finally argued that “revocation is harsh and unjust.”

The director’s response is that the director is authorized by ORS 731.236 and ORS 731.256 generally, and ORS 731.252, ORS 744.074, and ORS 731.988 specifically, to take various enforcement actions against the party for any violation

of the Insurance Code and related administrative rules, and the director believed that revocation was the appropriate action to take against the party under the circumstances of this case and consistent with actions taken in past similar cases.

The party requested “additonal [sic] time to get proper legal council [sic] in this matter.”

The director denies the party’s request because the party had adequate notice and opportunity to be represented by an attorney during this proceeding.³

The director now makes the following final decision in this proceeding.

Findings of Fact, Conclusions of Law and Opinion

The director adopts, and incorporates herein by this reference, the findings of fact, conclusions of law, and reasoning of proposed order as the findings of fact, conclusions of law, and reasoning of this final order, except as follows.

On page 2, in findings of fact 1, second sentence, the date the party became licensed in Oregon as a resident individual insurance producer is corrected from “August 30, 3004” to “August 30, 2004.”

On page 3, in findings of fact 7, after the last sentence, the evidentiary reference is corrected from “Ex. A64” to “Ex. A38.”

On page 5, in findings of fact 15, after the last sentence, the evidentiary reference is corrected from “Ex. A3 at 5” to “Ex. A40 at 5.”

On page 6, in findings of fact 20, after the last sentence, the evidentiary reference is corrected from “Test. Ex. A40” to “Ex. A40.”

² See ORS 731.240, ORS Chapter 183, and OAR 137-003-0501 *et seq.*

³ See *e.g.* (1) the notice of proposed action dated 2/24/10 which said in part “A party that is an individual may represent themselves, or may be represented at a hearing by an attorney licensed in Oregon except as otherwise provided by law. Legal aid organizations may be able to assist a party with limited financial resources;” (2) the party’s e-mail dated 3/3/10 @ 12:14 PM, saying “I am formally requesting a hearing on my case # INS 10-01-007. I am seeking the advice of an attorney tomorrow and will preceed [sic] in my defense. ...” and (3) OAH’s notice of hearing dated 5/5/10 enclosing a notice of contested case rights and procedures which said in part “**Representation by an attorney.** You may be represented by an attorney at the hearing. Parties appearing before the Office of Administrative Hearings in this type of hearing are usually represented attorneys. ... If you are not represented by counsel at the hearing but during the hearing you decide that you want to be represented, you may request a recess to allow you an opportunity to obtain the services of an attorney. ...” (Emphasis in original.)

On page 6, in findings of fact 22, after the second sentence, the following evidentiary reference is added: “Ex. A40 at 2.”

On page 7, in findings of fact 27, the second sentence is grammatically corrected to read “Matzye contacted Bankers Life and requested that the annuity be cancelled and the funds returned to the original company.”

On page 8, conclusions of law number 1 is clarified to read “Licensee violated OAR 836-080-0090 by recommending ~~an~~ multiple life insurance ~~policy or annuity annuities~~ to Richard “Dick” Whitaker and Retha Whitaker.” Similarly, conclusions of law numbers 2 to 4 are clarified by deleting “policy or” in each instance.

On page 8, in the first paragraph, the second sentence is corrected to read “The Division alleges that Licensee violated the rule in 2005 and 2006 and 2007 when making recommendations to Richard and Retha Whitaker, Velma Hoiseth, Zolman and Virginia Bond and Selma Matzye.”

On page 10, in footnote 4, after the last sentence, the following evidentiary reference is added: “; Ex. A41 at 7.”

On page 11, in the last complete paragraph, the first sentence is grammatically corrected to read “The record establishes that Licensee did not do a reasonable inquiry, and did not have reasonable grounds to believe that the annuities she recommended to the Bonds were suitable for them based upon their insurance objectives, financial situation and needs, age and other relevant factors.”

On page 13, in the second paragraph, the fourth sentence is grammatically corrected to read “Licensee was not aware of, and did not consider, the tax consequences to Matzye of the recommended conversions, nor was she aware of the significant penalties for terminating ~~annuities~~ the existing annuities.”

Other unspecified formatting errors are corrected.

Order

Pursuant to ORS 744.074(1), Blankenship’s Oregon resident individual insurance producer license is revoked on the date of this order.

Notice of Right to Judicial Review

A party has the right to judicial review of this order pursuant to ORS 183.480 and ORS 183.482. A party may request judicial review by sending a petition for judicial review to the Oregon Court of Appeals. The court must receive the petition within 60 days from the date this order was served on the party. If the order was personally delivered to a party, then the date of service is the date the party received the order. If the order was mailed to a party, then the date of service is the date the order was mailed to the party, not the date the party received the order. If a party files a petition, the party is requested to also send a copy of the petition to the Insurance Division by delivering or mailing it to the Insurance Division at Labor and Industries Building, 350 Winter Street NE Room 300, Salem, Oregon 97301-3880; or mailing it to PO Box 14480, Salem, OR 97309-0405; or faxing it to 503-378-4351; or e-mailing it to mitchel.d.curzon@state.or.us.

Dated September 28, 2010 /s/ Teresa D. Miller
Teresa D. Miller
Administrator
Insurance Division
Department of Consumer and Business Services

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